

Message Text

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ACTION L-03

INFO OCT-01 EUR-12 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00
DOTE-00 EB-08 INR-07 NSAE-00 FAA-00 INRE-00 SSO-00
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FM AMEMBASSY LONDON

TO SECSTATE WASHDC IMMEDIATE 1302

C O N F I D E N T I A L LONDON 03781

FOR TRIMBLE (STATE), BLISS (DOT), SCHULTZ (CAB)

E.O. 11652: GDS

TAGS: EAIR, UK

SUBJECT: US-UK CIVAIR NEGOTIATIONS

1. FOLLOWING THOROUGH DISCUSSION OF LEGAL ISSUES SURROUNDING ITS CAPACITY PROPOSAL, US DELEGATION HAS DEVELOPED REVISED DRAFT OF ITS CAPACITY PROPOSAL (TRANSMITTED SEPTEL). CAPACITY PROPOSAL WOULD ESTABLISH PRE-SCREENING MECHANISM WHEREBY CONTRACTING PARTY COULD FREEZE, AND IN CERTAIN CASES CURTAIL, OPERATIONS OF ITS CARRIERS FOR FAILURE TO MEET ESTABLISHED STANDARDS, I.E., LOAD FACTORS. DELEGATION HAS CONSIDERED PROBLEM POSED BY SECTION 401(E)(4) OF THE FAA, AND HAS DISCUSSED PRECEDENTIAL VALUE OF EXISTING BILATERALS PROVIDING FOR FIXED CAPACITY LEVELS (E.G., USSR) AND PRE-SCREENING (E.G., ITALY). IN LIGHT OF IMPORTANCE OF BERMUDA RENEGOTIATION AND POSSIBILITY ITS RESTRICTIVE FEATURES MIGHT BE CHALLENGED ON LEGAL GROUNDS. DELEGATION RECOMMENDS ATTORNEYS FROM DOT, CAB AND STATE CONFER TO CONSIDER FOLLOWING LEGAL ISSUES:

A. COULD THE USG OR ANY FEDERAL ENTITY LAWFULLY IMPLEMENT DECISIONS TO FREEZE OR CURTAIL CARRIER OPERATIONS?
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TIONS TAKEN PURSUANT TO PRE-SCREENING PROCEDURES.

B. WOULD US GOVERNMENTAL CONTROL OF CAPACITY BY REFUSAL TO TRANSMIT PROPOSED SCHEDULES TO FOREIGN GOVERNMENT BE PERMISSIBLE.

C. IF AN ACCEPTABLE MECHANISM COULD BE DEvised TO

ALLOW ONE PARTY TO ENFORCE RESTRICTIONS RESULTING FROM
PRE-SCREENING AGAINST THE CARRIER OF THE OTHER PARTY,
WOULD SUCH A DEVICE BE LEGALLY PREFERABLE.

2. ALTHOUGH US DRAFT MAY NOT BE TABLED IF UK DEMONSTRATES
NO MOVEMENT ON CAPACITY ISSUE, LEGAL BASIS FOR SOME FORM
OF CONTROL OVER CAPACITY WILL INEVITABLY BE A CONTINUING
ISSUE, AND ONE BRITISH MAY RAISE IN COURSE OF NEGOTIA-
TIONS.

SPIERS

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: CIVIL AVIATION, NEGOTIATIONS, AVIATION AGREEMENTS, MEETING REPORTS
Control Number: n/a
Copy: SINGLE
Sent Date: 07-Mar-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977LONDON03781
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Expiration:
Film Number: D770077-1203
Format: TEL
From: LONDON
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t19770386/aaaacyfp.tel
Line Count: 73
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: dd5381bc-c288-dd11-92da-001cc4696bcc
Office: ACTION L
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 11-Mar-2005 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3188385
Secure: OPEN
Status: NATIVE
Subject: US-UK CIVAIR NEGOTIATIONS
TAGS: EAIR, UK, US
To: STATE
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/dd5381bc-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009